Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)
	SC11641TS

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on ___ August 18, 2005 _____ Signature_____ Typed or printed name_____Pat Thomas_____	Application Number 09/800,935	Filed March 7, 2001
	First Named Inventor Iris M. Plaxton	
	Art Unit 2195	Examiner Kenneth Tang

Applicant request review of the final rejection in the above identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
       Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
     See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
     (Form PTO/SB/96)

☒ attorney or agent of record.
     Registration number_____30,185_____.

☐ attorney or agent acting under 37 CFR 1.34

     Registration number if acting under 37 CFR 1.34_____

Signature

_____Robert L. King_____
Typed or printed name

(512) 996-6839_____
Telephone number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of ____1____ forms are submitted

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DOCKET NO. SC1164ITS

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT	Iris M. Plaxton et al.	GROUP ART UNIT:	2195
APPLN. NO.:	09/800,935	EXAMINER:	Kenneth Tang
FILED:	March 7, 2001	CONFIRMATION No.:	5642
TITLE:	METHOD AND DEVICE FOR CREATING AND USING PRE-INTERNALIZED PROGRAM FILES		

Certificate of Transmission under 37 C.F.R 1.8

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STATEMENT OF REASONS FOR PRE-APPEAL BRIEF REVIEW

HONORABLE COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450
SIR:

Responsive to the Office Action dated June 16, 2005, and the Examiner's comments with regard thereto, Applicant herewith submits a Pre-Appeal Brief Request for Review and an accompanying statement.

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STATEMENT

In the current Application, claims 1-52 remain pending. Claims 1-52 are rejected under 35 U.S.C. 103(a).

Rejection of Claims 1-4, 7-9, 12-25, 27-29, 32-41, 43-48 and 51-52 under 35 U.S.C. 103(a)

The rejection of claims 1-4, 7-9, 12-24, 27-29, 32-41, 43-48 and 51-52 under 103(a) is based on a combination of Chan et al. (U.S. Patent 6,470,494) in view of Brandt et al. (U.S. Patent 4,695,950) and further in view of Bracha et al. (U.S. Patent 6,763,397). A prima facie case of obviousness under 103(a) has not been made at least for failing to disclose the claim limitation in claim 1 of a reusable executable image that "is capable of being executed by any subsequent invocation of the virtual machine without any internalization prior to execution" and for failing to disclose the claim 1 limitation of "thereby subsequently avoiding internalizing the program file for subsequent program executions". As acknowledged on page 3 in paragraph 5 of the final rejection communication, "Chan and Brandt fail to explicitly teach avoiding internalizing the program file for subsequent program executions."

Bracha et al. was cited for the proposition of teaching pre-internalizing into memory. However, there is no teaching or suggesting by Bracha et al. of pre-internalization, particularly not in the abstract and columns 1, 2, 16 and 17 which were referenced in the rejection basis. Bracha et al. teach a system for verifying instructions in a module of a computer program. If an instruction in the module requires information in a referenced module that is not already loaded, a constraint is written for the reference module in lieu of loading the referenced module. The Bracha et al. system is characterized as fully lazy. As described at Col. 4, lines 29-

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35 a virtual machine that is fully lazy loads a class only at the time that the class is first necessary to execute an instruction of a class currently being processed and thereby minimizes run time resources. As stated in the Abstract of Bracha et al., constraints are written for referenced modules that are not loaded. The constraints as described at Col. 16, line 66 are data which can be associated with a class but are not the recited "reusable executable image of the program file" recited in claim 1. In the Bracha et al. system, when a class is loaded into memory, constraints are internalized as stated at Col. 17, lines 1-3, but there is no teaching or suggestion of pre-internalizing the class files.

There is no teaching by Bracha et al. of pre-internalization and no teaching of pre-internalizing program files to create a reusable executable image of the program file as recited in claim 1. Again, as stated by Bracha et al. at Col. 4, lines 29-35, a virtual machine that is fully lazy loads a class only at the time that the class is first necessary to execute an instruction of a class currently being processed to minimize run time resources. Therefore, Bracha et al. teach away from a concept of pre-internalizing.

Dependent claims 2-4, 7-9 and 12-18 depend from claim 1 and are distinguishable at least for the reasons stated above. Additionally, claim 7 and depending claims 8, 9 and 12 were rejected on the basis of Brandt teaching two devices at Col. 2, lines 26-42, paragraph 9, page 4 of the final rejection. However at this portion of Brandt a single device CPU operating in a native mode and an emulation mode is described. The rejection has not met the burden of proof required to establish obviousness. Independent claim 19 recites a pre-internalized image "capable of being executed without any further internalization of the selected program file prior to execution by any subsequent invocation of the virtual machine". The Bracha et al. system does not teach internalization of program files

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and deals with internalization of data in the form of constraints to implement a fully lazy system. Dependent claims 20-25 are similarly distinguishable.

Independent claim 27 recites a device comprising a processor that "implements pre-internalizing the program file" and stores a "reusable executable image in the first permanent memory, wherein the reusable executable image is capable of being executed by the virtual machine without any internalization prior to execution". These recited features as described above are distinguishable from the Bracha et al. system. Dependent claims 28, 29, 32-36 and 51 are similarly distinguishable.

Independent claim 37 recites a device comprising a permanent memory for sotring a reusable executable image that "was previously created by pre-internalizing a program file into a native memory structure of the virtual machine". These recited features as described above are distinguishable from the Bracha et al. system. Dependent claims 38-41 and 43 are similarly distinguishable.

Independent claim 44 recites a device comprising a plurality of sets of instructions for determining whether a pre-internalized image of a selected program file has been created, operating a virtual machine in a pre-internalization mode and creating pre-internalized images of program files. These recited features as described above are distinguishable from the Bracha et al. system. Dependent claims 45-48 and 52 are similarly distinguishable.

Rejection of Claims 5-6, 10-11, 26, 30-31, 42 and 49-50 under 35 U.S.C. 103(a)

The rejection of claims 5-6, 10-11, 26, 30-31, 42 and 49-50 under 103(a) is based on a combination of Chan et al. in view of Brandt et al. in view of Bracha et al. (U.S. Patent 6,763,397) and further in view of Applicants' Admitted Prior Art in the specification. These claims are dependent from the previously discussed

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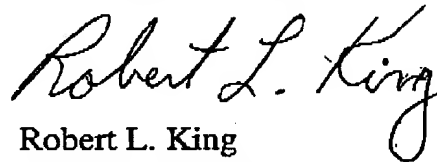Appl. No. 09/800,935   DOCKET NO. SC11641TS

independent claims. Applicants' admitted prior art in the specification does not add the missing elements in the rejected claims. The rejection is based on such admission teaching that portable devices are embedded with Java code. For the reasons stated above, the combination of references and Applicants' specification do not make claims 5-6, 10-11, 26, 30-31, 42 and 49-50 obvious.

Conclusion

Applicant respectfully requests review of the final rejection. Applicant requests that the rejection of claims 1-52 under 35 U.S.C. 103(a) be withdrawn and claims 1-52 allowed.

If Applicant has overlooked any additional fees, or if any overpayment has been made, the Commissioner is hereby authorized to credit or debit Deposit Account No. 503079, Freescale Semiconductor, Inc.

Respectfully submitted,
WILLIAM C. MOYER

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